

A. Benejam

02535



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Analytical Chemists, Inc.

File: B-256037

Date: April 29, 1994

David H. Elgas for the protester.
Jonathan H. Kosarin, Esq., and Steve R. Conway, Esq.,
Department of the Navy, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protester's contention that contracting agency improperly rejected its proposal for chemical analyses of compressed breathing air samples as technically unacceptable is denied where the agency's technical evaluation panel (TEP) evaluated protester's proposal in accordance with the evaluation criteria announced in the solicitation, and the record reasonably supports the TEP's overall conclusion that protester's proposal failed to address specific solicitation requirements.
2. Where solicitation announced that the agency intended to evaluate proposals and make award on the basis of initial proposals without conducting discussions, and agency's evaluation of the protester's proposal as technically unacceptable was reasonable and in accordance with the solicitation's evaluation criteria, agency was not required to conduct discussions with the protester and properly made award on the basis of initial proposals.

DECISION

Analytical Chemists, Inc. (ACI) protests the award of a contract to Technical Micronics Control, Inc. (TMC) under request for proposals (RFP) No. N61331-93-R-0021, issued by the Department of the Navy to provide chemical analysis of deep-sea divers' compressed breathing air. The protester contends that the Navy improperly evaluated its proposal and challenges the agency's decision to award a contract without conducting discussions.

We deny the protest.

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BACKGROUND

The RFP, issued on April 1, 1993, contemplated the award of an indefinite-quantity, indefinite-delivery, fixed-price contract for a base year and up to four 1-year option periods. The successful offeror was required to provide "sampling kits" and analyze gas samples from life support air compressor stations and air storage facilities at various military diving activities.¹ For the basic period and for each option year, offerors were to submit unit and extended prices for various estimated quantities of samples to be analyzed, and a total price for each year.

Section M of the RFP listed technical/management and price as the two major evaluation areas, with technical/management being more important than price. Within the technical/management area, the RFP listed the following evaluation factors in descending order of importance: technical approach, technical capabilities, and corporate experience.² The RFP stated that technical approach was approximately equal in importance to technical capabilities and corporate experience combined, and technical capabilities was approximately four times as important as corporate experience. The RFP incorporated by reference Federal Acquisition Regulation (FAR) § 52.215-16, Alternate III, which states that the government intends to award a contract without discussions, but reserves the right to conduct discussions if such are later determined by the contracting officer to be necessary. Award was to be made to the offeror whose proposal offered the greatest value to the government considering technical merit and price.

Of the 29 potential offerors issued the RFP, only 3 firms, including the protester and the awardee, submitted proposals by the May 20 closing date. A technical evaluation panel (TEP) evaluated technical proposals by assigning a numerical rating to each subfactor listed in the RFP. The TEP also assigned a risk rating (low, moderate, or high) under each evaluation factor, and an overall risk rating to each proposal. Price proposals were evaluated separately.³

¹The agency states that approximately 3,000 samples are tested each year, meeting the needs of approximately 400 deep-sea diving facilities worldwide.

²Within each evaluation factor the RFP also listed several subfactors to be considered in the evaluation of proposals.

³Since the RFP stated that the agency would reimburse the contractor for actual shipping costs for each kit, the agency evaluated proposed shipping costs. The agency's
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Technical merit was worth 60 percent of the total score, while price was worth 40 percent. In accordance with that scoring scheme, the program area manager normalized and weighted technical scores and price scores for each offeror by making 60 points the maximum possible technical score and 40 points the maximum total price score. Total prices, which ranged from \$980,000 to \$1,171,870 for the base and option periods, were scored by assigning the maximum number of points available (40) to the overall lowest-priced proposal, while higher-priced proposals were assigned proportionally fewer points, as follows (scores shown have been rounded off):

<u>Offeror</u>	<u>Tech. Score</u>	<u>Price Score</u>	<u>Total Score</u>	<u>Proposal Risk</u>
TMC	60.00	35.00	95.00	Low
ACI	46.00	34.00	80.00	Moderate
C	27.00	40.00	67.00	High

The TEP found ACI's proposal technically unacceptable. Significant findings of the Navy evaluators include that ACI did not meet the RFP's experience requirements; that ACI's inspection system plan did not comply with the applicable military standard referenced in the RFP; that ACI was not accredited by any professional association and had provided no evidence that it had applied for accreditation; and that ACI had not provided verification for its shipping costs.⁴ The evaluators were particularly concerned with ACI's limited corporate experience and assigned a high-risk rating to ACI's proposal under that evaluation factor. The TEP was also concerned with ACI's lack of accreditation, proposed key personnel, and deficient inspection plan, and assigned a high-risk rating to the firm's proposal under the technical capabilities evaluation factor.

The program area manager reviewed those results and recommended to the contracting officer that ACI's proposal be rejected as technically unacceptable and that TMC be

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analysis shows that ACI's proposal was overall slightly lower priced than TMC's.

⁴The evaluators also concluded based on actual tests of ACI's sampling kits that: (1) ACI's instructions for operating the sampling kits were unclear, (2) Navy divers were unable to use the kits successfully, and (3) the sampling kits ACI provided with its proposal did not seal properly. The contracting officer further states that ACI failed to acknowledge with its proposal two material amendments to the RFP.

awarded the contract without discussions. Concurring with that recommendation, the contracting officer awarded the contract to TMC on November 23. This protest followed.

DISCUSSION

ACI contends that the agency unreasonably evaluated its corporate experience and that of its proposed personnel, and that the RFP's 35-page proposal limitation prevented it from submitting a complete inspection plan. With respect to accreditation, ACI argues that it complied with the RFP's provision which allowed offerors to show they had applied for accreditation. ACI also contends that it submitted with its proposal shipping rates obtained from various sources. The protester argues that, in any event, these were minor deficiencies which could have been cured had the agency conducted discussions.

The evaluation of technical proposals is the function of the contracting agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation criteria. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Here, we find that the record reasonably supports the TEP's evaluation of ACI's proposal.

Experience

The RFP contemplated a contract for laboratory analysis of the breathing air samples submitted to the contractor by various diving facilities around the world.⁵ The RFP required that the contracting laboratory have a minimum of 3 years' experience in compressed breathing air analysis, and stated that companies demonstrating more relevant experience would be evaluated more favorably than those with less experience.

To assist the agency in evaluating offerors' experience in this regard, section 4.3 of the RFP instructed offerors to describe in detail similar government and commercial contracts performed, and include a separate synopsis for each contract by calendar year, contract number, and title.

⁵Throughout the solicitation and during these proceedings, the agency emphasizes, and the protester does not dispute, the significance of the program for Navy divers worldwide whose lives depend on the accurate monitoring and reporting on the quality of the compressed breathing air used in deep-sea diving operations.

As for personnel, the RFP required offerors to submit resumes for their proposed chemist and laboratory technicians, which the RFP identified as key personnel.

In response to the corporate experience requirement, ACI provided in its proposal 2 pages containing a total of 8 brief paragraphs. ACI stated that it had been performing sampling analyses since 1988, summarized its experience with general, vague statements such as "All of our work done for the Navy has been under small but numerous purchase orders," and listed the names of various ships, military facilities and private firms. As for ACI's commercial experience, after briefly describing the general need for its services in the private sector, the protester simply named six companies which ACI claimed as clients. ACI did not include a separate synopsis for each contract by calendar year; provided no contract numbers or titles; and provided no detailed description of the work it had performed for each of the military installations or private firms listed. As for its personnel, while ACI provided resumes for the individuals identified in its proposal as its project manager, senior chemist, and chemist, it did not provide a resume for a fourth individual it proposed as a laboratory technician.

The TEP viewed ACI as a relatively new company with limited experience in this area, and found that ACI's vague description of its government and commercial work did not meet the RFP's corporate experience requirement. As a result, all evaluators unanimously downgraded ACI's proposal under the corporate experience evaluation factor, and awarded the firm an average score of about 3 points (out of a maximum of 10 points) in this area. With respect to its personnel, the TEP considered ACI's project manager acceptable as a senior chemist, and considered two of the three other individuals ACI listed in its proposal acceptable as laboratory technicians. Since ACI did not submit a resume for its third proposed laboratory technician, the evaluators unanimously gave no credit to ACI for that technician under the technical capabilities evaluation area.

We find the TEP's conclusions regarding ACI's experience reasonable. The RFP required the successful offeror to have a minimum of 3 years of experience in analyzing compressed breathing air, required a synopsis of the contracts and a detailed description of the work performed, and warned offerors that general, vague descriptions would be considered inadequate. The RFP also required resumes for key personnel.

Rather than providing the level of detail called for in the solicitation, ACI submitted a sketchy proposal, with virtually no information about its past performance from which the TEP could properly conclude that ACI met the experience requirement of the RFP. In addition, ACI did not provide any background information or resume for one of its proposed laboratory technicians. Given that most, if not all, of the analyses will be performed by the laboratory technicians, who were designated as key personnel in the RFP, and given the specific RFP requirement for resumes, the importance of providing resumes for all of its proposed key personnel should have been clear to ACI.

The protester argues that the solicitation was ambiguous with respect to the number of laboratory technicians required, and thus that its failure to submit a resume for a third technician was not a deficiency. While the RFP could have been clearer with respect to the number of laboratory technicians required, we think that, reasonably interpreted, the RFP called for three laboratory technicians. Specifically, section H of the RFP listed the positions of chemist and laboratory technician as "key personnel," and section 4.2 of the RFP required offerors to provide "One (1) resume for the proposed chemist. . . ." and "Three (3) resumes for the proposed lab technicians" Moreover, section M of the RFP listed technical personnel as a subfactor to be evaluated within the technical capabilities evaluation factor. When the RFP is read as a whole, therefore, it is clear that offerors were required to submit resumes for all key personnel, including all proposed laboratory technicians. ACI proposed an individual as a laboratory technician for whom ACI provided no resume or background information. Since the TEP was unable to evaluate that individual's qualifications, educational background, or experience, the evaluators reasonably gave ACI no credit for that individual.

Not only were the minimum personnel and corporate experience requirements specifically identified in the RFP, they clearly are significant here where the work to be performed is highly specialized, and the analyses crucial to determining whether the compressed air breathed by Navy deep-sea divers is safe and free from life-threatening contaminants. ACI did not demonstrate in its proposal compliance with those requirements. Accordingly, the TEP reasonably downgraded ACI under the technical capabilities and corporate experience evaluation factors. See Oak Ridge Associated Univs., B-245694, Jan. 16, 1992, 92-1 CPD ¶ 86.

In its comments on the agency report, ACI submitted 18 pages listing several contracts it has performed and states that its experience encompasses many individual clients. ACI asserts that the TEP chairperson was very familiar with

ACI's work, and that ACI assumed that the TEP would contact at least one facility or private firm it listed to discuss ACI's performance.

No matter how competent a contractor may be, however, a technical evaluation must be based on information in or submitted with the proposal. See SeaSpace Corp., B-252476.2, June 14, 1993, 93-1 CPD ¶ 462. The fact that the TEP chairperson may have been familiar with ACI's reputation or its work is irrelevant. The RFP specifically instructed offerors how to prepare proposals and what type of information to submit to show compliance with the RFP's personnel experience requirements; ACI did not comply with those instructions. The TEP thus reasonably determined that ACI's proposal was unacceptable because ACI did not submit the minimum information requested by the RFP concerning its corporate or personnel experience. See Engineering Mgmt. Resources, Inc., B-248866, Sept. 29, 1992, 92-2 CPD ¶ 217.

Accreditation

The RFP required that the successful offeror be accredited by one of the professional associations listed in the RFP or provide proof with the proposal of having applied for accreditation.⁶ In its proposal, ACI stated that it had "recently paid the fees and requested an application" for accreditation, and submitted a photocopy of the front of a check for \$75 made payable to "AIHA: Attn: Laboratory Accreditation," and a copy of a completed "Laboratory Accreditation Program Request Form." Finding that ACI was not accredited by any professional association, and had not actually applied for accreditation, the TEP downgraded ACI under the facilities evaluation factor, awarding the firm only 1.25 points (out of a maximum of 10 points) under this criterion.

ACI's argument that it complied with the RFP's accreditation requirement is contrary to the plain meaning of the solicitation. Even assuming that ACI had paid the appropriate fee to AIHA, ACI provided no evidence with its proposal that it had even started the process beyond that of requesting an application package. Since ACI is not an accredited laboratory, and since it did not provide any evidence that it had actually applied for accreditation, the

⁶The RFP listed as recognized accreditation organizations the American Industrial Hygiene Association (AIHA), the American Association for Laboratory Accreditation, and the National Voluntary Laboratory Accreditation Program.

TEP reasonably downgraded the protester's proposal in this area.⁷

Transportation Rates

The RFP stated that the successful contractor would be reimbursed for actual transportation costs incurred for shipping sampling kits to and from the various military installations. To evaluate the total costs to the government, the RFP required offerors to submit the transportation costs of shipping their kits to a representative sample of 10 different military installations identified in the RFP. Specifically, the RFP required offerors to submit "Estimates from shipping companies or other means of verification of estimates" with their proposals.⁸

In response to this requirement, ACI submitted a table listing the cost of transporting its kits to and from the 10 military destinations listed in the RFP. ACI provided no explanation with its proposal of how it arrived at its estimated transportation costs nor any rate charts or other form of verification from any shipping company to support its proposed shipping costs. In view of the specific RFP requirement for offerors to provide verification of their proposed transportation costs, ACI's price listing, without more, provided the agency no means of determining the accuracy of those prices. As a result, the TEP reasonably downgraded the protester's proposal, assigning ACI an

⁷Even during these proceedings ACI does not argue that it has actually submitted an application for accreditation. ACI has provided only a photocopy of the canceled \$75 check that apparently accompanied its request to AIHA for the application package, and explains that accreditation is a very complex process. While the canceled check may show that AIHA processed ACI's request for an application, it is not evidence that ACI has submitted an application or that AIHA is considering ACI for accreditation.

⁸For the basic and option periods the pricing schedule included a fixed sum for transportation costs to be added to all offerors' prices. The RFP stated that for evaluation purposes, the estimated transportation costs submitted by offerors would be used to adjust the transportation costs stated in the pricing schedule to calculate each offeror's total proposed costs.

average of only 1.50 points under shipping costs evaluation criterion.⁹

During these proceedings ACI goes to great length to explain that it arrived at its estimated shipping costs by obtaining various quotes from the United States Postal Service, United Parcel Service, and Federal Express. ACI did not submit this information with its proposal, nor did ACI provide a shipping rate table from any of these services. Although ACI relies on this explanation to argue that the agency's evaluation of its shipping rates was unreasonable, the only significant consideration for purposes of our review is whether ACI adequately conveyed this information in its proposal. Since ACI did not provide this information until well after award, it does not affect the reasonableness of the agency's evaluation of ACI's proposal. See Benthos, Inc., B-248597, Sept. 10, 1992, 92-2 CPD ¶ 163.

In sum, ACI failed to address specific RFP requirements with respect to its experience and that of its proposed key personnel, failed to submit proof that it had applied for accreditation, and failed to submit verification for its proposed shipping costs. As a result, we have no basis to question the agency's downgrading ACI's proposal in those areas and assigning its proposal a high-risk rating overall. Accordingly, we find that based on the results of the evaluation, the contracting officer reasonably rejected ACI's proposal as technically unacceptable.¹⁰

⁹Throughout its protest submissions, ACI suggests that the RFP's 35-page proposal limitation prevented the firm from submitting relevant information concerning its experience and a complete inspection system plan, and that the RFP provided insufficient time for the firm to begin the accreditation process prior to closing. Protests based on alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals are required to be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1993). Since the proposal page limitation and the closing date for receipt of proposals appeared on the RFP, and since ACI did not file its protest until after award, these protest grounds are untimely.


¹⁰ACI also argues that TMC will be unable to perform in accordance with the contract because the awardee's sampling kits do not conform to the specifications. Whether an awardee performs in accordance with the terms of a contract concerns a matter of contract administration which we generally will not review. See 4 C.F.R. § 21.3(m)(1); ADC Ltd., B-255457, Oct. 25, 1993, 93-2 CPD ¶ 258.

Discussions

ACI next argues that the agency should have conducted discussions to afford ACI an opportunity to submit the missing resume of its proposed laboratory technician, to explain how it arrived at its estimated transportation costs, and to explain its experience and clarify the status of its accreditation application, thus raising these areas and its overall proposal to acceptable levels.

A Department of Defense contracting agency may make an award on the basis of initial proposals and not conduct discussions or allow offerors to revise their proposals where the solicitation advises that proposals are intended to be evaluated, and award made, without discussions with the offerors, unless discussions are determined to be necessary. 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. IV 1992); FAR § 15.610(a)(4).¹¹ Here, section L of the RFP incorporated by reference FAR § 52.215-16, Alternate III, which specifically advises offerors that the agency intends to evaluate proposals and award a contract without discussions, and warns offerors to submit their best terms from a price and technical standpoint in their initial proposals. Moreover, the RFP instructed offerors to clearly demonstrate in a detailed proposal how they planned to comply with the RFP requirements, including a full explanation of techniques, procedures, and key personnel who will perform the contract. Thus, all offerors, including ACI, were on notice that the agency might not conduct discussions, and that their initial proposals should contain the most favorable terms they were prepared to offer. As discussed above, the agency's evaluation of ACI's proposal as technically unacceptable was reasonable. Under these circumstances, the agency was not required to conduct discussions with ACI, but properly could make award on the basis of initial proposals. See Honolulu Marine, Inc., B-245329, Dec. 27, 1991, 91-2 CPD ¶ 586.

The protest is denied.


for Robert P. Murphy
Acting General Counsel

¹¹For Department of Defense, Coast Guard, and National Aeronautics and Space Administration procurements, the requirement that an award on the basis of initial proposals result in the lowest overall cost to the government has been eliminated. See FAR § 15.610.